

**REMARKS/ARGUMENTS**

This amendment is in response to the Office Action of December 30, 2004, in which the Examiner (1) objected to claims 1-10 on account of certain informalities, and (2) rejected claims 1-10 and 13-16 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application No. 2002/0087472 issued to Walter ("**Walter**").

Applicant has amended claims 1 and 5 to correct informalities.

Applicant respectfully traverses the rejection under 35 U.S.C. §102(e).

**Walter** discloses a system wherein a customer's privacy data may be encoded into a bar code or magnetic strip on a key floss or card. In the embodiment described, the card bearing the privacy data is a loyalty card or frequent shopper card (see paragraph 0044), rather than a payment instrument. While **Walter** mentions in passing (paragraph 0046) that the encoding of personal privacy data may be on a "smart card", it is clear in **Walter** that, during the retail transaction, when the privacy data is provided, the privacy data is read from the loyalty card, and such loyalty card is not part of the payment instrument, which is separately read (see paragraph 0025 -- "Information from the card or check is obtained via the reader. The reader *also* may obtain information from a magnetic strip of a loyalty card.") (emphasis added).

Further, **Walter** does not disclose a method of protecting consumer personal data wherein the receipt of personal data is obtained by "receiving an application for a payment instrument" and then "storing at least some of the personal data and privacy preference onto the payment instrument, wherein the payment instrument further includes customer account information", as all recited in claim 1. Thus, **Walter** does not disclose Applicant's system of collecting privacy preference information when the financial instrument is being applied for, nor does it show providing customer account information, personal data and privacy preferences, all on the *payment* instrument .

In order to clarify and further distinguish Applicant's invention from **Walter**, claim 1 has been amended to recite that the personal data and privacy preference are "requested before the payment instrument is issued," and that the purchase request "is in response to presentation of the payment instrument and includes the customer account information and at

least some of the personal data and the privacy data." While believed implicit, Applicant has further amended claim 1 to include a recitation that "the purchase request provides the consumer account information as well as the personal data and the privacy preference from the payment instrument, without separate entry of the personal data and the privacy preference from an instrument other than the payment instrument." Such limitations are clearly not disclosed, taught or suggested by **Walter**.

Claim 13 has likewise been amended to include a limitation that "consumer account information as well as the personal data and the privacy preference are provided from the payment instrument, without separate entry of the personal data and the privacy preference from an instrument other than the payment instrument."

The dependent claims recite further limitations in addition to those recited in claims 1 and 13, and are thus likewise distinguishable from **Walter**.

### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



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